NON-CONFIDENTIAL REDACTED VERSION

STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion		
	:	**ICC Docket No. 11-0710**
In re Proposed Contracts Between Chicago Clean Energy, Inc. and Ameren Illinois Company and Between Chicago Clean Energy, Inc. and Northern Illinois Gas Company for the Purchase and Sale of Substitute Natural Gas Under the Provisions of Illinois Public Act 97-0096	: : :	

VERIFIED COMMENTS OF CHICAGO CLEAN ENERGY, LLC REGARDING RETURN ON EQUITY

Chicago Clean Energy, LLC ("CCE"), by and through its counsel DLA Piper LLP (US), in accordance with the Ruling of the Administrative Law Judge stated at the November 14, 2011 hearing, respectfully submits these Verified Comments with respect to a reasonable rate of return for its clean coal SNG brownfield facility. In particular, CCE requests approval from the Illinois Commerce Commission ("ICC") of a reasonable rate of return for its clean coal SNG brownfield facility, which CCE proposes be set at $0.93/MMBtu, as set forth in CCE's November 10, 2011 submittal to the ICC. (For convenience, CCE's November 10, 2011 submittal is attached hereto and made a part hereof as Exhibit A.)

In the final draft sourcing agreement submitted to the ICC by the Illinois Power Agency ("IPA"), this base rate of return for the equity investor is embedded in the capital component of the rates to be charged. It also was reflected in the November 10, 2011 submittal by CCE to the ICC. (*See* Exhibit A.)

The capital component of the price to be charged by a clean coal SNG brownfield facility is described in the Public Utilities Act ("Act") as a "cost of debt" plus a "reasonable return on equity." Schedule 5.2A of the sourcing agreement specifies how this calculation is to be operationalized:

> Final Capital Cost = Actual Cost of Debt + ICC-Approved Rate of Return
> [all values $/MMBtu]

As set forth in Schedule 5.2A, the Actual Cost of Debt is a function of the following values to be established by the ICC: ICC-Approved Capital Costs, Base Case Interest Rate, Base Case Debt Percentage, and Base Case Debt Term. Per the terms of the sourcing agreement, the Actual Interest Rate and Actual Cost of Debt are to be confirmed by the ICC at the time of financial close for the CCE facility, at which time they are to be incorporated into the schedule.

The yearly cost of debt shown in Schedule 5.2A (a levelized amortization of the total actual debt amount, the debt term, and the interest rate) is divided by a fixed amount of 42,064,500 MMBtu to derive the "Actual Cost of Debt" on a per-MMBtu basis.[1] The value for ICC-Approved Capital Costs is inclusive of Direct and Indirect Costs (including Engineering and Management), Owner's Costs, Financing Costs (prior to commercial operations), Contingency & Escalation, Additional Contingent Equity, and Initial Inventories, but not the CPRA Commitment Amount.

Schedule 5.2A of the sourcing agreement provides that the ICC-Approved Rate of Return is to be a single $/MMBtu value, which is to be set during this ICC process, and fixed for the entire term of the sourcing agreement. The revised version of Schedule 5.2A which was submitted by CCE to the ICC on November 10, 2011 contains the values for each row in the table that CCE now seeks approval from the ICC. All of the values are necessarily tied together as a single package, as shown in the CCE Cash Flow Model which was provided to ICC Staff on October 19, 2011 . (For convenience, the Confidential CCE Cash Flow Model is attached hereto and made a part hereof as Confidential Exhibit B.) CCE is seeking approval for the

$0.93/MMBtu base return on equity, while committing to lock in the approved capital costs and the maximum level of leverage (debt %) on those capital costs. If CCE were to achieve lower-cost financing (such as a Federal Loan Guarantee), this structure would allow for that lower cost of debt to be directly passed along to consumers by lowering the SNG base contract price.

On October 18, 2011, the IPA submitted to the ICC Staff a report entitled "Chicago Clean Energy Coke/Coal Gasification to SNG Project: Analysis of Return on Equity" (the "IPA Report"). The IPA Report recommends that the "base" return on equity be no higher than 9% for the CCE project, while recognizing that the ICC might set the base return higher, if it sought to advance additional policy considerations. (*See* IPA Report at 15.)

On October 19, 2011, CCE provided to ICC Staff a Confidential Brattle Group Report, demonstrating how the $0.93/MMBtu rate of return embedded in the SNG capital component correlates to the rate of return realized by the owner of the Chicago Clean Energy facility. (For convenience, the October 19, 2011 Battle Group Report is attached hereto and made a part hereof as Confidential Exhibit C.) On November 9, 2011, CCE provided ICC Staff with a Confidential Addendum to the Brattle Group Report. (For convenience, the November 9, 2011 Addendum to the Battle Group Report is attached hereto and made a part hereof as Confidential Exhibit D. Collectively, the Brattle Group Report and the Addendum are referred to herein as the "Brattle Group Reports.") The Brattle Group Reports conclude that CCE's base return on equity would be in the range of 2.1%-5%, less than the upper bound of 9% recommended in the IPA Report. Further, the Brattle Reports used a model-based approach to evaluate the reasonableness of the rate of return for CCE using the criteria specified in the Act: "a commercially reasonable return on equity taking into account the return on equity being received by developers of similar facilities in or outside of Illinois, the need to balance an incentive for

[1] Section 5.2 of the Sourcing Agreement, under Capital Component A, "For purposes of determining the Capital Component, the Annual Contract Quantity will be 43.5 Bcf." This is multiplied by the SNG heating value of 967 btu/scf to reach 42,064,500.

clean-coal technology with the need to protect ratepayers from high gas prices, the risks being borne by the clean coal SNG brownfield facility." Brattle estimated the all-in risk-adjusted rate of return for CCE's owner to be REDACTED, concluding this to be a "reasonable rate of return for this Project."

WHEREFORE, for the reasons set forth in these Verified Comments and the Exhibits hereto, Chicago Clean Energy, LLC respectfully requests that the Illinois Commerce Commission establish a base return on equity of $0.93/MMBtu for CCE's clean coal SNG brownfield facility, as set forth in CCE's November 10, 2011 submittal to the ICC.

Respectfully submitted,

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